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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 445

FLOY P. BALDWIN, PETITIONER,

vs.

IOWA STATE TRAVELING MEN'S ASSOCIATION, A CORPORATION, RESPONDENT.

RESISTANCE TO PETITION FOR WRIT OF CERTIORARI.

J. M. PARSONS,
Counsel for Respondent.

EARL C. MILLS,
Of Counsel.

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A case was commenced in the Circuit Court of Jackson County, Missouri, June 9, 1922, and was by proper proceedings removed to the Federal Court with a special appearance and a motion to quash the service and dismiss the case. This motion was submitted and sustained so far as to quash the service and the case was allowed to remain standing on the docket under the provision of Section 83 of the Judicial Code. This order was made in October, 1923. On the 24th of June, 1924, the defendant filed a motion in the Missouri

Federal Court to dismiss on the ground that the plaintiff had taken no further steps and in this motion recited that it appeared so for that purpose only. On November 18, 1924 another summons was issued out of the Federal Court, Missouri, and was served on one O. C. Sheley as an agent of the defendant company and on June 26, 1925 the defendant again filed its motion, reciting therein that it specially appeared and for no other purpose than asking that the service be quashed. This motion was submitted on affidavits and the Missouri Federal Court overruled it and gave the defendant thirty days to answer, and it failing to answer entered default and rendered a judgment against the defendant.

On the judgment thus rendered by the Missouri Federal Court, this action was brought in the District Court of the United States for the Southern District of Iowa and was tried before Judge Dewey, district judge. His opinion and finding of facts is set out in the Transcript of Record filed in the C. C. A., commencing at page 16 and ending at page 22. We desire to call the particular attention to the finding of facts on page 16 of this transcript. Also, specially to the particular finding on page 18 of the transcript wherein it is stated "The plaintiff does not claim in this Court that the appearance of the defendant in the State court for the purpose of moving its transfer to the Federal Court was an appearance or conferred jurisdiction of the Federal Court upon the defendant, and it has been held that such appearance for this purpose does not confer jurisdiction" and in the opinion rendered by Judge Dewey who held that the Fed-

eral Court of Kansas City was without jurisdiction and rendered judgment for the defendant. This case went to the Circuit Court of Appeals and the Circuit Court of Appeals, after considering it, rendered its decision set out on page 53 of the printed transcript, ending on page 56.

So if, an examination be made of the finding of facts by Judge Dewey, it will be seen that it appears in the record without dispute that the defendant, the Iowa State Traveling Men's Association, is a corporation organized under the laws of the State of Iowa and has its principal and only place of business in the State of Iowa, having no agents anywhere or in any State and never had any in the State of Missouri and never entered the State of Missouri for the purpose of doing business or consented in any way to the Missouri authorities exercising any control over it. True, it wrote policies or certificates on citizens in practically every state in the union. It employed no agents. The members sometimes solicited others to join; that is, told them of the benefits and applications would be sent to the home office at Des Moines, there be approved and the contract was then completed. In the case of loss, proofs were sent to the home office and the home office sent its check by mail in the event of settlement. The person upon whom the service was made in Missouri was in no way an agent of the defendant. He was sometimes employed by the defendant if it had a report of an accident to make, a physical examination of the party claimed to be injured and report the facts to the company or its association with no powers further.

So, then, it is evident from the record that there was no way that the defendant could be brought into the Federal Court in Missouri excepting with its own consent. It could not be brought into any State Court in Missouri, excepting with its own consent and in neither instance was that consent given.

Therefore, this case presents this question and it seems to us this question only: "Does a non-resident corporation where an attempted service of process is made upon one not an agent of the corporation by appearing in court, specially for the purpose of objecting to jurisdiction confer upon the Court jurisdiction over the person or the corporation?" In other words, is an appearance specially to call attention to the lack of jurisdiction a consent to the exercise of jurisdiction? Respectable cases are cited of courts ruling that where appeal is taken and the party raising the jurisdictional question raises it in the Appellate Court of the State that he is bound by the decision.

We don't have that case here. We have never gone outside of the *nisi prius* court in which the question arose. Simply called attention of the court to the fact that it had no jurisdiction. Is the fact that a court's assertion "jurisdiction" when in fact it has none, sufficient to give that court jurisdiction so that the only method of resisting its action is by appeal? It certainly would not exist if the court did not have jurisdiction of the subject matter. Neither, it seems to us, would it exist if the proper steps had not been taken to get jurisdiction of the person. We invite, particularly, the reading of Judge Dewey's finding of

facts. So, on the whole, without setting out authorities except as contained in other opinions sought to be reviewed, we respectively submit the matter to the court.

J. M. PARSONS,
Counsel for Respondent.